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10 Attorneys for Defendants  
11 CITY OF SAN JOSE and CINDY CHAVEZ

12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN JOSE FACILITY

15 LICKING ENTERPRISES, INC.

16 Plaintiff,

17 v.

18 CITY OF SAN JOSE, a municipal  
19 corporation; SAN JOSE CITY COUNCIL;  
20 RON GONZALES, CINDY CHAVEZ, PAT  
21 DANDO, KEN YEAGER, CHUCK REED,  
22 FORREST WILLIAMS, LINDA J.  
23 LEZOTTE, NORA CAMPOS, GEORGE  
24 SHIRAKAWA, JR., DAVI D. CORTESE,  
25 JOHN DIQUISTO, sued in their official  
26 capacities,

27 Defendants.

NO.: C07-00735 RMW (PVT)

**ANSWER TO COMPLAINT FOR  
DECLARATORY AND EQUITABLE  
RELIEF, DAMAGES, COSTS AND FEES;  
DEMAND FOR JURY TRIAL**

28 Defendants City of San Jose and Cindy Chavez hereby respond to the Complaint and Demand for Jury Trial filed by Plaintiff in this action, and admit, deny and respond as follows:

1. In response to the allegations in paragraph 1 of the Complaint, Defendants deny that this court has jurisdiction over the controversy.

2. In response to the allegations in paragraph 2 of the Complaint, Defendants are without information and belief as to the business organization and operation of Plaintiff, and on that basis deny the allegations contained therein.

1           3. In response to the allegations in paragraph 3 of the Complaint, Defendants admit  
2 that the City of San Jose is a municipal corporation organized under the laws of the State of  
3 California.

4           4. In response to the allegations in paragraph 4 of the Complaint, Defendants admit  
5 that allegations contained therein.

6           5. In response to the allegations in paragraph 5 of the Complaint, Defendants admit  
7 that Defendant Ron Gonzales was the Mayor of the City, and a member of the City Council,  
8 but deny that he was the "Chief Executive" of the City.

9           6. In response to the allegations in paragraphs 6 through 15 of the Complaint,  
10 Defendants admit that the stated individuals were members of the City Council.

11           7. In response to the allegations in paragraph 16 of the Complaint, Defendants deny  
12 the allegations contained therein.

13           8. In response to the allegations in paragraph 17 of the Complaint, Defendants admit  
14 that San Jose receives federal funding.

15           9. In response to the allegations in paragraph 18 of the Complaint, Defendants are  
16 without information or belief as the facts contained therein and on that basis, deny such  
17 allegations.

18           10. In response to the allegations in paragraph 19 of the Complaint, Defendants admit  
19 that Plaintiff applied for a zoning change, and that the Planning Department reviewed the  
20 application and recommended approval. Except as so admitted, Defendant denies the  
21 remainder of the allegations therein.

22           11. In response to the allegations in paragraph 20 of the Complaint, Defendants admit  
23 the allegations contained therein.

24           12. In response to the allegations in paragraph 21 of the Complaint, Defendants admit  
25 that a number of neighborhood meetings occurred, but are without information and belief as  
26 to exactly what was said at those meetings, and on that basis deny the allegations related  
27 thereto.

1           13. In response to the allegations in paragraph 22 of the Complaint, Defendants are  
2 without information and belief as to whether Plaintiff was notified of another community  
3 meeting, and about what community leaders requested, and on that basis, deny such  
4 allegations.

5           14. In response to the allegations in paragraph 23 of the Complaint, Defendants admit  
6 that a City Council meeting took place and that the City Council voted to deny the re-zoning.

7           15. In response to the allegations in paragraph 24 of the Complaint, Defendants deny  
8 the allegations contained therein.

9           16. In response to the allegations in paragraph 25 of the Complaint, Defendants admit  
10 that the City Council denied the rezoning, but deny that the Councilmembers "followed" the  
11 memorandum of Councilmember Chavez.

12           17. In response to the allegations in paragraph 26 of the Complaint, Defendants admit  
13 that Plaintiff filed a complaint with HUD and that the Complaint was dismissed and a  
14 determination of no reasonable cause was issued, but Defendants are without information  
15 and belief as to the actual dates upon which such actions took place, and on that basis, deny  
16 the allegations related thereto.

17           18. In response to the allegations in paragraph 27 of the Complaint, Defendants deny  
18 the allegations contained therein.

19           19. In response to the allegations in paragraph 28 of the Complaint, Defendants deny  
20 the allegations contained therein.

21           20. In response to the allegations in paragraph 29 of the Complaint, Defendants deny  
22 the allegations contained therein.

23           21. In response to the allegations in paragraph 30 of the Complaint, Defendants deny  
24 the allegations contained therein.

25           22. In response to the allegations in paragraph 31 of the Complaint, Defendants deny  
26 the allegations contained therein.

27           23. In response to the allegations in paragraph 32 of the Complaint, Defendants  
28 incorporate their responses to the incorporated paragraphs.

1           24. In response to the allegations in paragraph 33 of the Complaint, Defendants  
2 acknowledge that Congress enacted the Fair Housing Amendment Acts of 1988.

3           25. In response to the allegations in paragraph 34 of the Complaint, Defendants are  
4 without information and belief as to the truth of said allegations and on that basis deny the  
5 allegations contained therein.

6           26. In response to the allegations in paragraph 35 of the Complaint, Defendants deny  
7 the allegations contained therein.

8           27. In response to the allegations in paragraph 36 of the Complaint, Defendants deny  
9 the allegations contained therein.

10          28. In response to the allegations in paragraph 37 of the Complaint, Defendants deny  
11 the allegations contained therein.

12          29. In response to the allegations in paragraph 38 of the Complaint, Defendants  
13 incorporate their responses to the incorporated paragraphs.

14          30. In response to the allegations in paragraph 39 of the Complaint, Defendants deny  
15 the allegations contained therein.

16          31. In response to the allegations in paragraph 40 of the Complaint, Defendants deny  
17 the allegations contained therein.

18          32. In response to the allegations in paragraph 41 of the Complaint, Defendants deny  
19 the allegations contained therein.

20          33. In response to the allegations in paragraph 42 of the Complaint, Defendants  
21 incorporate their responses to the incorporated paragraphs.

22          34. In response to the allegations in paragraphs 43 through 48 of the Complaint,  
23 Defendants deny the allegations contained therein.

24          35. In response to the allegations in paragraph 49 of the Complaint, Defendants  
25 incorporate their responses to the incorporated paragraphs.

26          36. In response to the allegations in paragraph 50 of the Complaint, Defendants reply  
27 that the cited code sections speak for themselves.

1 37. In response to the allegations in paragraph 51 of the Complaint, Defendants deny  
2 the allegations contained therein.

3 38. In response to the allegations in paragraph 52 of the Complaint, Defendants  
4 incorporate their responses to the incorporated paragraphs.

5 39. In response to the allegations in paragraphs 53 through 56 of the Complaint,  
6 Defendants deny the allegations contained therein.

7 40. In response to the allegations in paragraph 57 of the Complaint, Defendants  
8 incorporate their responses to the incorporated paragraphs.

9 41. In response to the allegations in paragraphs 58 through 61 of the Complaint,  
10 Defendants deny the allegations contained therein.

11  
12 **AFFIRMATIVE DEFENSES**

13 Defendants further allege:

14 **FIRST AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

15 The Complaint fails to state a cause of action upon which relief may be granted.

16 **SECOND AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

17 Plaintiff's Complaint is barred by the applicable statute of limitations.

18 **THIRD AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

19 Plaintiff's Complaint is barred by the equitable doctrines of laches, unclean hands,  
20 waiver and/or estoppel.

21 **FOURTH AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

22 Plaintiff's Complaint is barred by its failure to present an adequate government claim.

23 **FIFTH AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

24 Plaintiff failed to mitigate its damages, if any.

25 **SIXTH AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

26 Regarding any constitutional claims, individual defendants are not liable based on  
27 qualified immunity.

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**SEVENTH AFFIRMATIVE DEFENSE TO EACH CAUSE OF ACTION**

Defendants assert the affirmative defenses and immunities provided in Government Code Sections 800 through 1000.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiffs failed to exhaust administrative and judicial remedies.

**NINTH AFFIRMATIVE DEFENSE**

The actions complained of were within the police power of the Defendants and are therefore privileged.

**TENTH AFFIRMATIVE DEFENSE**

To the extent Plaintiffs are basing their claims on Defendants' legislative and/or discretionary activities, Defendants are immune from liability.

**ELEVENTH AFFIRMATIVE DEFENSE**

The Court lacks jurisdiction to hear this matter, which should be reviewed by a state court on a petition for writ of mandate.

DATED: May 11, 2007

RICHARD DOYLE, City Attorney

By: /s/ Clifford S. Greenberg  
CLIFFORD S. GREENBERG  
Senior Deputy City Attorney

Attorneys for Defendants CITY OF SAN  
JOSE and CINDY CHAVEZ

**DEMAND FOR JURY TRIAL**

These answering Defendants hereby demand a jury.

DATED: May 11, 2007

RICHARD DOYLE, City Attorney

By: /s/ Clifford S. Greenberg  
CLIFFORD S. GREENBERG  
Senior Deputy City Attorney

Attorneys for Defendants CITY OF SAN  
JOSE and CINDY CHAVEZ